IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1314 OF 2005

Ashok Bandu Mohite .. Appellant

Versus

Ishwar Govind Mohite & Ors. .. Respondents

Mr.N.V.Bandivadekar for appellant

Mr.A.S.Kapse for respondent No.3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8th August 2007.

P.C.

. The appellant is the original plaintiff, whose suit was dismissed by the trial court as well as lower appellate court.

2. When this matter was placed before me on the last occasion, Mr.Bandivadekar appearing for appellant and Mr.Kapse appearing for respondent No.3 state that the respondent Nos. 1 and 2 have not contested the proceedings even before the court below, whereas attempts at settlement are being made between the appellant and respondent No.3.

3. The case set up by the appellant before the Court below is that he is a bonafide purchaser for value without notice. The said argument has been repelled on the ground that the sale deed which has been executed in favour of the plaintiff by defendant Nos. 1 and 2 is in contravention of the law and, therefore, Revenue Authorities cannot be restrained from taking steps in view of their earlier decision.

4. Respondent No.3 before me is the original

defendant No.3. The suit was filed on the basis of a sale deed executed by original defendant Nos. 1 and 2 in favour of the appellant - plaintiff. In other words, the appellant asserted that he has become owner and the decisions in the previous proceedings in respect of the lands are not binding on him. Therefore, an injunction restraining defendants from obstructing his possession of the lands should be issued.

5. The appellant is in possession of the land pursuant to the sale deed. The date of sale deed in favour of appellant is dated 26th August 1986. It is contended that one Chandrabai Vishnu Godse sold the land vide registered sale deed to the vendors of the present appellants i.e. defendant Nos. 1 and 2. Original Defendant No.3 - Respondent No.3 was the only contesting defendant and written statement was filed on her behalf. Her case was that the sale deed between

plaintiff and defendant Nos. 1 and 2 was bogus and not binding on her. Further, the land was bequeathed to her by a will and, therefore, she is entitled to possession.

6. It is in such circumstances, that now parties have agreed to put an end to the dispute. Respondent No.3 does not press the claim that the sale deed in favour of the present appellant is bogus and not binding on her.

7. In the light of the above following consent order would sub-serve the ends of justice.

8. Mr.Bandivadekar agrees and undertakes that within a period of six weeks from today, the appellant would pay to respondent No.3 a sum of Rs.1 lakh. Upon receipt of that sum within the period specified above, the sale deed insofar as the appellant and the original defendant Nos. 1

and 2 is concerned, would be binding upon the third respondent - original defendant No.3 and the decree passed by the court below to stand modified by consent to that extent.

9. In default, the second appeal to stand dismissed and in that event the judgement and decree rendered by the courts below to bind the appellant. In that event, no interest would pass to the appellant in pursuance of the sale deed dated 26th August 1986.

10. Consent of parties to the above is recorded pursuant to the instructions received by Mr.Bandivadekar so also on instructions of son of third respondent who is present in court.

(S.C.DHARMADHIKARI, J)